

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA, :
:
v. : 11-CR-00029 (LDW)
:
ROBERT DITO, : June 22, 2011
:
Defendant. : Central Islip, New York
:
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TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE ARLENE R. LINDSAY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: UNITED STATES ATTORNEY
BY: SPIROS A. MOUSTAKAS, ESQ.
ASSISTANT U.S. ATTORNEY

For the Defendant: THOMAS H. SPREER, ESQ.

Court Transcriber: MARY GRECO
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transcript produced by transcription service

I N D E X

Defendant Sworn at Page 3

1 THE CLERK: 11-CR-29, The United States of America v.
2 Robert Dito. Please state your appearances.

3 MR. MOUSTAKAS: For the Government, Assistant United
4 States Attorney Spiros Moustakas.

5 MR. SPREER: For Mr. Dito, Thomas Spreer, 100 Fire
6 Island Avenue, Babylon, New York.

7 THE COURT: All right. Gentlemen, sit down and let's
8 swear in the defendant.

9 THE CLERK: Mr. Dito, would you please rise and raise
10 your right hand?

11 (AT THIS TIME THE DEFENDANT, ROBERT DITO, WAS SWORN.)

12 THE CLERK: Thank you.

13 THE COURT: All right. Mr. Dito, take a seat and I'm
14 going to go over this allocution with you. I understand that
15 you filled out what we call an allocution form which is a
16 series of questions and answers that you provided. You know
17 what I'm talking about?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. And at the time you gave the
20 answers that are entered into this form, did you answer
21 truthfully and in the best of your ability?

22 THE DEFENDANT: Yes, I did, Your Honor.

23 THE COURT: Okay. So now I'm going to go over this
24 form with you but you've been sworn in now so the answers that
25 you give me are going to be subject to the penalties of

1 perjury. Do you understand?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Okay. So let's just begin with your age.
4 How old are you?

5 THE DEFENDANT: 58 years old.

6 THE COURT: How far did you get in school?

7 THE DEFENDANT: I graduated college.

8 THE COURT: In the past 24 hours, have you taken any
9 kind of anything that would not be considered food like drugs,
10 medications, pills, alcohol, anything like that?

11 THE DEFENDANT: I take my daily vitamins. That's all
12 I take in the morning.

13 THE COURT: Vitamins?

14 THE DEFENDANT: Yes.

15 THE COURT: What type of vitamins?

16 THE DEFENDANT: Like fish oil, things like that.

17 THE COURT: Okay.

18 THE DEFENDANT: Something for my knee just to keep
19 the joints --

20 THE COURT: Anything that is supposed to, you know,
21 affect your thinking?

22 THE DEFENDANT: No, Your Honor. There's no
23 prescription drugs at all involved.

24 THE COURT: Okay. So is your mind clear here today?

25 THE DEFENDANT: Yes.

1 THE COURT: Mr. Spreer, have you discussed this
2 matter with your client?

3 MR. SPREER: I have, Your Honor.

4 THE COURT: And are you satisfied he's competent to
5 proceed today?

6 MR. SPREER: Yes.

7 THE COURT: Okay. All right. All right. So Mr.
8 Dito, I want to just go over with you what your rights are
9 before I can accept this plea. The first right you have is to
10 plead not guilty. Do you understand that?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: Okay. So I'm going to go over with you
13 what happens if you were to go forward with a plea of not
14 guilty because if you pled not guilty, under the constitution
15 and laws of the United States you would be entitled to a speedy
16 trial, a public trial, with your attorney, Mr. Spreer, there to
17 defend you and if you couldn't afford an attorney to defend you
18 in that action, the Court would be required to appoint you an
19 attorney so that you would always be entitled to a defense
20 lawyer to help you defend the case. Do you understand that?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: Okay. One of the things that would
23 happen is that at a trial you would be presumed to be innocent.
24 That means you have no burden at all. That is it would be up
25 to the Government to prove your guilt beyond a reasonable doubt

1 by introducing competent evidence of your guilt. It's their
2 burden to prove your guilt beyond a reasonable doubt. So if
3 they didn't meet that standard of beyond a reasonable doubt,
4 then a jury would have a duty to find you not guilty. Do you
5 understand that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Now, if there were a trial, the witnesses
8 that the Government has would have to appear here in court in
9 your presence. They would have to testify in your presence,
10 and your attorney would have the right to cross examine the
11 Government's witnesses, he would have the right to object to
12 evidence that the Government might offer against you, and if
13 you decided you wanted to introduce some evidence, he would be
14 permitted to do that as well. Do you understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Now, if there was a trial, you have the
17 right to testify if you wanted to, but you wouldn't be
18 obligated to testify because you have the right not to
19 incriminate yourself. So if you decided to go to trial and
20 didn't want to testify, then the Court would instruct the jury
21 that that decision was one of your rights and they couldn't
22 hold it against you, that is because you have the right not to
23 incriminate yourself. Do you understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: So what happens if you plead guilty and I

1 accept this plea is that you're going to give up your
2 constitutional rights to a trial and these other rights I've
3 just talked about. You see, there would be no trial of any
4 kind and no right to appeal the question of whether or not
5 you're guilty of this count that you're pleading guilty to. So
6 you're pleading guilty to Count 12. So once you enter a plea,
7 that's it. You can't then protest at some later date oh gee, I
8 really wasn't guilty of that crime. Do you understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. And the other thing that's going
11 to happen is that while you wouldn't be able to appeal the
12 question of whether or not you're guilty of that count or crime
13 that's charged, you would have a right to appeal the sentence
14 of the Court.

15 Now, I understand you have an agreement with the
16 Government; is that right?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Okay. Let me just hear from the
19 Government's attorney, just if you would, just summarize for me
20 the agreement that's been entered.

21 MR. MOUSTAKAS: Your Honor, the defendant will be
22 pleading guilty to Count 12 in the indictment. Based on the
23 defendant's criminal history the Government estimates that the
24 adjusted offense level is 14 with a criminal history category
25 of 1 which has a range of imprisonment of 15 to 21 months.

1 However, because the defendant is pleading guilty today, the
2 Government will be moving for an adjusted offense level of 13
3 which has a range of imprisonment of 12 to 18 months.

4 THE COURT: Okay. And there's a waiver of the right
5 to appeal the sentence if it's 21 months or below?

6 MR. MOUSTAKAS: Yes, Your Honor.

7 THE COURT: Okay. So Mr. Dito, let me just tell you
8 something else about your agreement here. I told you that once
9 you enter a plea of guilty, that's it, you can't challenge the
10 question of whether or not you're guilty of the crime. But the
11 other thing that's happened based on your agreement with the
12 Government is that you only have a very, very limited right to
13 appeal the sentence of the Court meaning that based on your
14 agreement with the Government, if Judge Wexler, who I believe
15 is the sentencing judge in this case, decides to sentence you
16 to a term of imprisonment of 21 months or less, you have no
17 right to appeal that sentence. Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: So at the end of the day if you went to
20 Judge Wexler and he sentenced you to 21 months, that's it.
21 There's no appeal of anything in this case. Do you understand
22 that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. So one of the other things that's
25 discussed in this Plea Agreement what are called the sentencing

1 guidelines and the Government elaborated on what they estimated
2 was your guideline range and with the adjustment down to 13 the
3 guideline range was estimated to be 12 to 18 months.

4 I just want to go over a little bit of that with you.
5 First of all, did you discuss the guideline range with your
6 attorney?

7 THE DEFENDANT: Yes, I did.

8 THE COURT: I don't need you to tell me what he said,
9 I just want to know you went over it with him.

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Okay. And so as you probably know by
12 now, the guideline range is this mathematical computation that
13 is a calculation based on elements of the crime and elements of
14 your past. That's what is taken into account. Were there
15 victims? How many victims? What was the extent of the
16 gambling operation? Have you done this before? Do you have
17 health issues? Is there a desire to prevent continuing
18 activity of this type? All of those factors get a number. And
19 it is estimated by the Government that at the end of the day
20 based on what they know about your case, that number is 13
21 which carries that term of imprisonment which I described as 12
22 to 18 months.

23 The thing that you need to know here, and I'm sure
24 you discussed this with your lawyer and he may have given you
25 his educated guess as to what the number is as well, and his

1 number may dovetail what the Government's estimate is. What
2 you need to know is that if the Government is wrong, you can't
3 withdraw your plea. So if the punishment turns out to be more
4 severe than you expected, you don't get to change your mind
5 about entering the plea of guilty. It doesn't matter what your
6 lawyer said, it doesn't matter what the Government's best guess
7 is based on what they put in the Plea Agreement. The only one
8 who gets to decide what is going to be the sentence in your
9 case is Judge Wexler. Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: So what is going to happen is you're
12 going to go to the Probation Department and Probation is going
13 to look at all this stuff that I described, all the factors,
14 and they will make a report and submit it to Judge Wexler.
15 He'll look at that report and he will make a reasonable
16 evaluation of your case and decide what sentence is reasonable
17 for you. It could be more than what's estimate by your lawyer
18 or the Government, it could be less. Okay?

19 So you now know that if Judge Wexler sentences you to
20 21 months or less you can't appeal that. If he sentences you
21 to more than that, you can't withdraw your plea but you have
22 the right to appeal the fairness or the reasonableness of that
23 sentence or the propriety of that sentence. Do you understand
24 that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: So one of the things that is important
2 for you to know is well how bad can this get? And so that's
3 why the Government always includes what the penalties are for
4 the count you're pleading guilty to because there is a
5 limitation to what Judge Wexler can do and the limitation is
6 what is the maximum that the count you're pleading guilty to
7 provides? So if you look at the first page of the Plea
8 Agreement it tells you what's the maximum or the worst case
9 scenario that can happen to you. The maximum term of
10 imprisonment is five years, the minimum being zero.

11 There's also a maximum supervised release term that
12 could follow imprisonment. That would be up to three years of
13 supervised release. And there's a maximum fine of \$250,000.00.
14 It looks like there's no restitution in this case. There's a
15 \$100.00 mandatory assessment. And you're also subject to
16 criminal forfeiture whatever Judge Wexler determines it to be.
17 Do you understand that?

18 THE DEFENDANT: Yes, I do, Your Honor.

19 THE COURT: Okay. So again, to emphasize this, you
20 have been given certain educated information or guesses about
21 what may happen to you but at the end of the day it's important
22 that you understand that Judge Wexler will be the final arbiter
23 of what is appropriate for your sentence and you have some
24 limited rights to appeal what he does. But at the end of the
25 day you can't withdraw your plea if you don't like what happens

1 to you. Do you understand that?

2 THE DEFENDANT: Yes, I do, Your Honor.

3 THE COURT: All right. The other thing I wanted to
4 make sure you understand is that when you plead guilty,
5 remember I told you you have the right not to incriminate
6 yourself when you testify? When you testify -- you don't have
7 to testify because you can refuse. Remember I discussed that
8 with you?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. But when you enter a plea of
11 guilty, you're going to have to give up that right not to
12 incriminate yourself because one of the things the Court will
13 do is ask you questions or require that you admit what you did
14 so that I can be sure that you are in fact guilty of the crime
15 that you're pleading guilty to and were charged with. Do you
16 understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: So in answering my questions you would
19 have to give up your right not to incriminate yourself and
20 admit your responsibility and guilt for that crime. Do you
21 understand?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: Okay. Now, I discussed a number of
24 things with you. Some very, very important principles and some
25 issues with respect to sentencing guidelines can get a little

1 complicated for somebody who's not used to this. Did you
2 understand what I explained?

3 THE DEFENDANT: Yes, I did, Your Honor.

4 THE COURT: Okay. Do you have any questions about
5 any of this?

6 THE DEFENDANT: No, I do not.

7 THE COURT: So are you willing to give up your right
8 to a trial and the other rights I've just discussed with you?

9 THE DEFENDANT: Yes, I am, Your Honor.

10 THE COURT: All right. And you understand the count
11 in the indictment that you're going to plead guilty to?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: Sir, are you ready to enter a plea at
14 this moment?

15 THE DEFENDANT: Yes, I am.

16 THE COURT: Mr. Spreer, do you know of any legal
17 reason why the defendant should not be permitted to enter a
18 plea?

19 MR. SPREER: I don't, Your Honor. Thank you.

20 THE COURT: Mr. Dito, are you satisfied with your
21 legal representation up to this point?

22 THE DEFENDANT: Yes, I am, Your Honor.

23 THE COURT: All right. With respect to Count 12 of
24 the indictment, what is your plea?

25 THE DEFENDANT: Guilty.

1 THE COURT: Are you entering this plea of guilty
2 voluntarily and of your own free will?

3 THE DEFENDANT: Yes, I am, Your Honor.

4 THE COURT: Has anyone threatened or forced you to
5 plead guilty?

6 THE DEFENDANT: No, no one, Your Honor.

7 THE COURT: No one's threatened you?

8 THE DEFENDANT: No one threatened me.

9 THE COURT: Other than the agreement with the
10 Government which we've described on the record -- and by the
11 way, you read that agreement?

12 THE DEFENDANT: Yes, I did, Your Honor.

13 THE COURT: Okay. Has anyone made any promises to
14 you to cause you to plead guilty?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Has anyone promised you what your
17 sentence is going to be in this case?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: All right. Then with respect to Count
20 12, did you as charged in Count 12 on or about and between
21 March of 2009 and September of 2009, those being approximate
22 dates, did you within the Eastern District of New York and
23 elsewhere acting as an official and an employee of the State of
24 New York, did you knowingly and intentionally conspire with
25 others to obstruct the enforcement of the criminal laws of the

1 State of New York with the intent to facilitate an illegal
2 gambling business, that is the illegal gambling business that
3 was identified in this indictment? Is that right? Is that not
4 the count he's pleading guilty to?

5 MR. SPREER: No, he is pleading guilty to that count,
6 Your Honor. That's fine, Your Honor.

7 THE COURT: And did you in furtherance of that
8 conspiratorial agreement, did you, acting again within the
9 Eastern District of New York together with others do one or
10 more of the following overt acts to further that agreement,
11 that is did you on or about August 10, 2009 have a telephone
12 conversation to further the conspiratorial agreement? Is that
13 the count, the overt act he's acknowledging?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Okay. Did you have that telephone
16 conversation to facilitate the illegal gambling business that
17 was identified in Paragraph 54 of the indictment?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And you know what 54 says; right? Let's
20 go over 54. Referring to Paragraph 54 which appears on Page 26
21 of that indictment, it describes an illegal gambling business
22 where illegal card games were being played at a location
23 described as Rainier Avenue in Ronkonkoma and that that illegal
24 gambling business was operating in violation of the laws of the
25 State of New York. Do you understand that that's the gambling

1 business --

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: -- that you engaged in a conspiratorial
4 agreement to facilitate?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Okay. All right. So now tell me in your
7 own words what it is you did, how did you do this, and where in
8 the Eastern District -- it says in 54 that it was in
9 Ronkonkoma, but is that where the business was operating?

10 THE DEFENDANT: Yes. I was at my job at work and
11 became aware that there was --

12 THE COURT: Where was that, by the way?

13 THE DEFENDANT: Suffolk County Police Department.

14 THE COURT: Okay.

15 THE DEFENDANT: And I became aware that there was
16 going to be a search warrant executed at that location.

17 THE COURT: Being the Rainier Avenue, Ronkonkoma
18 location?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Okay. And did you know what was going on
21 at that location?

22 THE DEFENDANT: At that time, at the time that there
23 was a search warrant they told us it was just a gambling
24 operation.

25 THE COURT: Okay. So you knew that the search

1 warrant was going to be to hit this gambling operation at
2 Rainier in Ronkonkoma; correct?

3 THE DEFENDANT: Correct, Your Honor.

4 THE COURT: All right. So you got advance notice
5 before the search warrant was executed?

6 THE DEFENDANT: Yes.

7 THE COURT: Okay. What did you do?

8 THE DEFENDANT: At that time, again, bad judgment on
9 my part in thinking that an individual was a friend, I thought
10 that I was calling him as a friend so that he wouldn't be
11 involved in getting arrested at a gambling location. And at
12 that point I called him and advised him that there was going to
13 be a warrant executed at that location that he was going to be
14 going gambling in. That was the sum extent of my conversation
15 with him as far as that was concerned.

16 THE COURT: Okay. And is that the overt act of the
17 phone call in August that you made?

18 THE DEFENDANT: That was the one in March.

19 THE COURT: In March?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. Well, I asked you if you were
22 admitting the overt act of a phone call made in August.

23 THE DEFENDANT: Yes.

24 THE COURT: What was the August call?

25 THE DEFENDANT: That was a general call again that I

1 made to him, again not knowing what, if any, kind of
2 affiliation he had with these gambling operations other than
3 being just a gambler there. I had called him again to tell
4 him, you know, don't go to these places that they're having
5 these -- where you're going to gamble because they're going and
6 doing search warrants at numerous different places. I didn't
7 know which ones he might be going to. It was basically just a
8 warning to tell him not to go there so that he wouldn't be
9 involved in any kind of arrest or anything else like that as
10 far as being a participant.

11 THE COURT: Did you identify the places where you
12 thought he should stay away from?

13 THE DEFENDANT: In general. Again, I didn't have
14 specific locations, you know, as far as addresses, just general
15 locations because there were a few known gambling locations
16 within the area.

17 THE COURT: Okay. Let me hear from the Government
18 on, first of all, as to the adequacy of the allocution and
19 what's the Government's proof here.

20 MR. MOUSTAKAS: Yes, Your Honor. With respect to the
21 first instance that the defendant was discussing, that was an
22 illegal gambling operation located on Orville Drive where he
23 made a phone call to warn that a raid was coming by law
24 enforcement.

25 The second instance that the defendant does discuss

1 is the Rainier Avenue illegal operation in Bohemia that was on
2 August 10th that the defendant did make phone calls as well as
3 --

4 THE COURT: Okay. So I got that confused. So
5 Rainier is in Bohemia.

6 MR. MOUSTAKAS: Yes.

7 THE COURT: Okay. And that was an August call?

8 MR. MOUSTAKAS: Yes.

9 THE COURT: All right. Do you acknowledge that, Mr.
10 Dito?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. So the August call which was the
13 first overt act was the call that you described as alerting
14 your friend --

15 THE DEFENDANT: The August call would have been --

16 MR. MOUSTAKAS: The second, Your Honor. There was a
17 call in March of 2009.

18 THE COURT: Right.

19 MR. MOUSTAKAS: And then another set of warrants were
20 to be executed in August and that is when the defendant made a
21 telephone call and was visually observed by law enforcement
22 agents leaving the emergency services barracks and going to a
23 location and meeting with other named, another named
24 codefendant.

25 THE COURT: Okay. Now remind me, what happened in

1 March? What was the March call for?

2 MR. MOUSTAKAS: March, Your Honor, there was a search
3 warrant to be executed by the Suffolk County Police Department
4 and a tip was given that the raid was happening and the
5 occupants of that gambling location left --

6 THE COURT: Okay.

7 MR. MOUSTAKAS: -- before the execution of the
8 warrant.

9 THE COURT: So you made both calls, Mr. Ditto, the
10 March call and the August call?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: With knowledge that you were tipping
13 somebody about a search warrant that would be executed?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And you understood that by doing that it
16 would facilitate the gambling operation or at least prevent the
17 Government from enforcing and the state from enforcing the law?

18 THE DEFENDANT: Yes, Your Honor. I should have
19 thought about that a lot harder than I did when I initially
20 made those phone calls.

21 THE COURT: Okay. All right. Then based on the
22 information that's been given to me, I find that you, Mr. Dito,
23 are acting voluntarily and that you fully understand your
24 rights and the consequences of this plea and that there is a
25 factual basis for it. I therefore accept the plea to Count 12

1 of this indictment. I'll recommend that Judge Wexler do the
2 same. What are we doing with any applications with respect to
3 bail and do we have a date for sentence? We have no sentence
4 date.

5 MR. MOUSTAKAS: We have no sentence date, Your Honor,
6 and we would consent to the same custody status. The defendant
7 has a bail package.

8 THE COURT: So same bail conditions are continued.
9 Anything else I have to address?

10 MR. MOUSTAKAS: Not at this time, Your Honor.

11 THE COURT: All right. Well, Mr. Spreer, it was good
12 to see you.

13 MR. SPREER: Good to see you, Your Honor, absolutely.

14 THE COURT: Okay. Thank you.

15 MR. MOUSTAKAS: Thank you, Your Honor.

16 [Off the record.]

17 THE COURT: Go back on the record. I should have
18 asked you this before but I can ask it now, but I want to make
19 sure Mr. Dito, you understand that Judge Wexler is going to be
20 the one who sentences you. I told you that.

21 THE DEFENDANT: Yes.

22 THE COURT: But you had the absolute right to wait
23 for Judge Wexler to take your plea. Do you understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: All right. But I understand that he was

1 occupied and that you agreed then to come to me to take your
2 plea; is that right?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. But you still understand that
5 he could take your plea and that you can insist on that. Do
6 you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Okay. All right. Thank you.

9 MR. SPREER: Thank you.

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1 I certify that the foregoing is a court transcript from an
2 electronic sound recording of the proceedings in the above-
3 entitled matter.



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5 _____
6 Mary Greco

7 Dated: July 16, 2011
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